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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6075
Date Complaint Filed: September 19, 2008
Date of Notification: September 24, 2008
Date of Last Response: November 13, 2008
Date Activated: December 23, 2008
Expiration of Statute
of Limitations: August 19, 2013

COMPLAINANT:

Betty Fischer

RESPONDENTS:

Friends of Bill Zedler
Bill Zedler
Congressman Joe Barton
Congresswoman Kay Granger

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441i(e)(1)(B)
11 C.F.R. § 300.62

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint alleges that Congressman Joe Barton, Congresswoman Kay Granger, Texas State Representative Bill Zedler and his state campaign committee, Friends of Zedler, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with a September 9, 2008 fundraising event for Bill Zedler's reelection to the Texas State House of Representatives. Specifically, the complaint alleges that U.S. Representatives Barton and Granger, together with their "agent," State Representative Zedler, illegally solicited "soft money" in an August 19, 2008 invitation to the event, which listed U.S. Representatives Barton and Granger as "Honorary Hosts" of the event. Representative Zedler and separately, in a joint

1 response, Representatives Barton and Granger, responded to the complaint, asserting that the
2 matter should be dismissed. Both responses include the same affidavit of Bill Zedler.

3 As set forth in more detail below, the Respondents all maintain that the Representatives
4 and their staffs never discussed soliciting for the event, and did not approve, authorize, agree,
5 or consent to be featured on the invitation. Moreover, Representatives Barton and Granger
6 assert that their agreement to serve as "Honorary Hosts" of the event was "preliminary."

7 Accordingly, we recommend that the Commission find no reason to believe that Congressman
8 Barton, Congresswoman Granger, Bill Zedler and Friends of Bill Zedler violated 2 U.S.C.
9 § 441i(e)(1)(B).

10 **II. FACTS**

11 On August 19, 2008, Friends of Bill Zedler sent out invitations for a September 9, 2008
12 fundraising event to reelect Bill Zedler to the Texas legislature. The invitation solicited
13 contributions in the amounts of \$1,000, \$2,500, or \$5,000, and listed Representatives Barton and
14 Granger (the "Representatives") as "Honorary Hosts" of the event. See Attachment 1. The
15 complaint states that after a *Texas Weekly* blog article described the invitation as a "violation,"
16 the Zedler campaign sent a second invitation that omitted the Representatives' names and
17 designations and stated "A layout error was made on the previous invitation to this event. This
18 corrected invitation supersedes all other invitations in order to ensure complete compliance with
19 state and federal law." See Attachment 2. The second invitation solicits the same amounts of
20 contributions as the first.

21 In his affidavit, Zedler states that Representatives Barton and Granger, as well as Texas
22 Attorney General Greg Abbott, and Texas State Senators Kim Brimar and Jane Nelson, agreed to
23 serve as "Honorary Hosts" of his September 9, 2008 fundraiser. According to Zedler, "[a]sking

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1 other elected officials to serve as Honorary Hosts is customary in state elections." Zedler

2 Affidavit at 2. However, Zedler avers:

3 At no time during the conversations with any of the elected officials or
4 their respective staffs were they requested to solicit political contributions
5 on my behalf nor did they request that I solicit political contributions in
6 their name or otherwise authorize me or my staff to do so. Moreover, it
7 was never my intent to attribute any funds that would be raised at the
8 fundraiser for my state re-election campaign to any of the elected officials
9 due to their mere attendance at the fundraiser. . . . None of the elected
10 officials or their respective staffs reviewed or were otherwise involved in
11 the preparation or dissemination of the invitation. Additionally, neither my
12 staff nor I informed Congresswoman Granger and Congressman Barton, or
13 their respective staffs, as to the content of the invitation.

14
15 *Id.*

16 After speaking to the *Texas Weekly* reporter, Zedler contacted the staffs of
17 Representatives Barton and Granger, told them he was reissuing the invitation without their
18 names, and publishing "a new and clarifying invitation to supersede all previous invitations." *Id.*
19 at 2-3. Finally, Zedler avers that neither Representative attended the fundraiser, and that the
20 largest individual contribution received at the event was \$1,250, and the largest PAC
21 contribution received was \$2,500, *id.* at 3, both of which are within the federal limits. In their
22 joint response, the Representatives rely on Zedler's affidavit, but additionally state that the
23 conversations with the Zedler campaign were through their staffs, their agreements to serve as
24 "Honorary Hosts" were "preliminary," and that neither they, nor their respective staffs, reviewed
25 or were otherwise aware of the first invitation prior to its issuance by the Zedler campaign.

III. DISCUSSION

Federal officeholders and candidates for Federal office may solicit, receive, direct, transfer or spend funds in connection with any non-Federal election only in amounts and from sources that are consistent with State law and that do not exceed the Act's contribution limits or come from prohibited sources. *See* 2 U.S.C. § 441i(e)(1)(B) and 11 C.F.R. § 300.62. The Act limits individual contributions to \$2,300 and political action committee contributions to \$5,000. *See* 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(2)(A); *see also* 2 U.S.C. § 441a(c).

In analyzing whether pre-event publicity that contains a solicitation by a federal candidate or officeholder violates the Act and the Commission's regulations, the Commission has used a two-part test. *See* Advisory Opinion 2003-3 (Eric Cantor, *et al.*) at 7 and Advisory Opinion 2003-36 (Republican Governors Association) at 6; *see also* MURs 5712 and 5799 (McCain). The first part of the test is whether the publicity for the event constitutes a solicitation for donations in amounts exceeding the Act's limitations or from sources prohibited from contributing under the Act. Here, with respect to the first invitation, the answer to the first part of that inquiry is yes, because the invitation solicits \$2,500 and \$5,000, both in excess of the Act's limitation for individual contributors. In addition, the invitation fails to state that corporate and labor union contributions are prohibited.

The second part of the test is whether the Federal candidate or officeholder approved, authorized, agreed, or consented to be featured or named, in the publicity. From the information available, it appears that the answer to the second inquiry is no. The complaint states that "it is inconceivable that [State Representative Zedler] would have distributed an invitation featuring two Members of Congress without having secured their consent beforehand." However, while Zedler apparently thought he had their final consent to serve as "Honorary Hosts," he

acknowledges that he did not have Representatives Barton's and Granger's consent to use their names in an invitation in order to raise money. Zedler has averred, and both Representatives agree, that there were no conversations with the Representatives or their staffs concerning the soliciting of contributions on Zedler's behalf or in their names, and no authorization by the Representatives for Zedler and his staff to do so, and neither the Representatives nor their staffs reviewed or were involved in the preparation or dissemination of the first invitation, or were informed of its contents. Further, Barton and Granger each assert that even the agreement to serve as "Honorary Host" was "preliminary." Whether the agreement to serve as "Honorary Host" was preliminary or final, all parties agree that the agreement did not include an understanding that the honorary host role included a role that was specifically related to fundraising. Because the agreement to serve as "Honorary Hosts" appears to have been preliminary without any decisions as to how that title would be used or otherwise what roles the Representatives would play, the Commission need not reach the question of whether agreeing to serve as "Honorary Hosts" alone satisfies the second part of the two-part test. *See* Advisory Opinion 2003-3 (Eric Cantor, *et al.*). Therefore, we recommend that the Commission find no reason to believe that Congressman Joe Barton, Congresswoman Kay Granger, State Representative Bill Zedler and Friends of Zedler violated 2 U.S.C. § 441i(e)(1)(B), and close the file.

IV. RECOMMENDATIONS

1. Find no reason to believe that Congressman Joe Barton violated 2 U.S.C. § 441i(e)(1)(B).
2. Find no reason to believe that Congresswoman Kay Granger violated 2 U.S.C. § 441i(e)(1)(B).

3. Find no reason to believe that Bill Zedler violated 2 U.S.C. § 441i(e)(1)(B).
4. Find no reason to believe that Friends of Bill Zedler violated 2 U.S.C. § 441i(e)(1)(B).
5. Approve the attached Factual and Legal Analyses.
6. Approve the appropriate letters.
7. Close the file.

October 22, 2009
Date

Thomasenia P. Duncan
Thomasenia P. Duncan
General Counsel

K. H. Guith
Kathleen Guith
Deputy Associate General Counsel
for Enforcement

Susan L. Lebeaux
Susan L. Lebeaux
Assistant General Counsel

Delbert K. Rigsby
Delbert K. Rigsby
Attorney

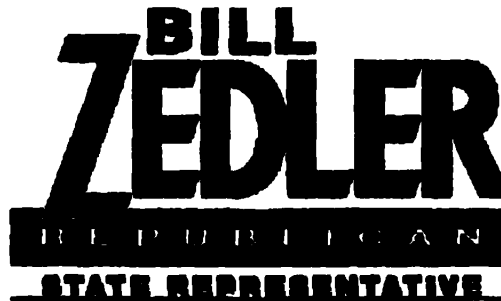
Attachments:

1. Invitation dated August 19, 2008
2. Invitation dated August 28, 2008

From: Deborah Ingersoll [REDACTED]
Sent: Tuesday, August 19, 2008 12:54 PM
To: Recipient list suppressed:
Subject: Rep. Bill Zedler Fundraising Reception

Attachment 1

PLEASE NOTE: WE ARE NOT ORGANIZING THIS EVENT.
PLEASE SEE ATTACHMENT AND INFORMATION BELOW. *Thanks!*



Dee Kelly, Jr. cordially invites you to
a luncheon reception honoring
State Representative

Bill Zedler

*Vice Chairman Public Education
Business and Industry Committee Member
House Administration Committee Member*

Honorary Hosts

The Honorable Gregg Abbott - Attorney General of Texas
The Honorable Joe Barton The Honorable Kay Granger
The Honorable Kim Brimer The Honorable Jane Nelson

Special Guest

The Honorable Tom Craddick
Speaker of the Texas House

Tuesday, September 9, 2008
11:30 AM – 1:00 PM

The City Club
301 Commerce Street
Fort Worth, Texas 76102
Host Contribution Levels

ATTACHMENT 1
Page 1 of 2

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***\$5000 * \$2500 *\$1000**

**RSVP by September 5th or for additional information,
please contact Kerry Lundelius**

or

**Contributions may be mailed to:
Friends of Bill Zedler
P.O. Box 175473
Arlington, Texas 76003**

**POLITICAL ADVERTISEMENT PAID FOR BY Deborah C. Ingersoll
3903 Turkey Creek Drive * Austin TX * 78730**

ATTACHMENT 1

Page 2 of 2

29044254639

From: Deborah Ingersoll (mailto: [REDACTED])
Sent: Thursday, August 28, 2008 11:59 AM
To: Recipient list suppressed:
Subject: Rep. Bill Zedler Fundraising Reception

Attachment 2

PLEASE NOTE: WE ARE NOT ORGANIZING THIS EVENT.
PLEASE SEE ATTACHMENT AND INFORMATION BELOW. *Thanks!*



Dee Kelly, Jr. cordially invites you to
a luncheon reception honoring
State Representative
Bill Zedler

*Vice Chairman Public Education
Business and Industry Committee Member
House Administration Committee Member*

Special Guests

**The Honorable Tom Craddick
Speaker of the Texas House**

**The Honorable Roger Williams
Chairman Victory Texas '08**

Tuesday, September 9, 2008

11:30 AM – 1:00 PM

The City Club

301 Commerce Street

Fort Worth, Texas 76102

A layout error was made on the previous invitation to this event. This corrected invitation
supersedes all other invitations in order to ensure complete compliance with state and
federal law.

**POLITICAL ADVERTISEMENT PAID FOR BY Deborah C. Ingersoll
3903 Turkey Creek Drive * Austin TX * 78730**

ATTACHMENT 2
Page 1 of 3

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**BILL
ZEDLER**
REPUBLICAN
STATE REPRESENTATIVE

Yes. I support Rep. Zedler's re-election, and plan to attend the luncheon on September 9th.

Host Level Contributions:

☐ **G \$5,000** ☐ **G \$2,500** ☐ **G \$1,000**

☐ **G** I am unable to attend the reception, however, enclosed is my check for Bill's re-election.

Please make checks payable to Friends of Bill Zedler.

Personal and PAC checks are welcome.

Corporate donations are prohibited by state law.

Contributions are not tax deductible.

Please complete the back of this card for Bill and for Texas Ethics Commission reporting.

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Name _____

Address _____

City/ST/Zip _____

Office Phone _____

Home Phone _____

Email _____

Employer _____

Occupation _____

Mail to P.O. Box 175473 Arlington, Texas 76003

Pol. Adv. paid for by Friends of Bill Zedler • P.O. Box 175473 • Arlington, TX 76003